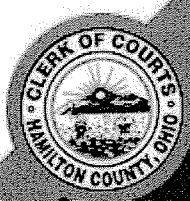


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Case Summary

Case Number: B 9309022
Case Caption: STATE OF OHIO vs. JAMES DERRICK ONEAL
Judge: RALPH WINKLER
Filed Date: 12/16/1993
Case Type: 0005 - WARRANT ON INDICTMENT
Race: BLACK - AFRICAN AMERICAN
Sex: M
Age: 52
Date of Birth: 7/10/1954
Count 1: AGGRAVATED MURDER 2903-01 ORCN
Disposition: 12/11/1995 3DOC DEPARTMENT OF CORRECTIONS
Count 2: AGGRAVATED MURDER 2903-01 ORCN
Disposition: 12/11/1995 3DOC DEPARTMENT OF CORRECTIONS
Count 3: ATTEMPT 2923-02 ORCN
Disposition: 12/11/1995 3DOC DEPARTMENT OF CORRECTIONS
Count 4: AGGRAVATED BURGLARY F1 2911-11 ORCN
Disposition: 12/11/1995 3DOC DEPARTMENT OF CORRECTIONS

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Case History

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Doc	Image#	Date	Description	Amount
		5/22/2007	COPY OF ENTRY DECLINING JURISDICTION AND DISMISSING APPEAL, FILED IN THE SUPREME COURT OF OHIO ON 05/02/07, SC# 2007-0080	
		1/26/2007	NOTICE OF APPEAL OF APPELLANT JAMES DERRICK O'NEAL, FILED IN THE SUPREME COURT OF OHIO ON 01/16/07, SC# 07-0080	
		12/6/2006	CRIMINAL STATE COSTS SATISFIED	
		12/1/2006	JUDGMENT ENTRY AND DECISION AFFIRMING JUDGMENT TO TRIAL COURT C-050840 12-01-06 ***COPIES SENT TO DOC AND DEFENDANT ON 12/07/06, RSR***	
		12/12/2005	COURT OF APPEALS OF HAMILTON COUNTY CASE NO. C-050840	
		12/9/2005	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED	
		12/2/2005	COMPLETE TRANSCRIPT OF PROCEEDINGS C-050840 1 VOL.	
		10/25/2005	PRAECIPE OF DEFENDANT- APPELLANT JAMES DERRICK O'NEAL	
		10/25/2005	AFFIDAVIT OF INDIGENCY	
		10/24/2005	NOTICE OF APPEAL FILED NO. C050840 COPY SENT TO HAMILTON COUNTY PROSECUTOR	

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11	10/12/2005	ENTRY ORDERING RETURN OF INMATE TO INSTITUTION
	9/26/2005	NOTICE OF APPEALABLE JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES ENTITLED TO A COPY.
12	9/26/2005	DECISION DENYING DEFT'S MOTION TO VACATE OR SET ASIDE HIS DEATH SENTENCE
	6/14/2005	POST-ATKINS HEARING BRIEF.
	6/7/2005	PETITIONER JAMES O'NEAL'S POST-HEARING BRIEF.
	5/31/2005	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	5/17/2005	NOTICE OF CHANGE OF ADDRESS OF COUNSEL FOR DEFENDANT.
2	4/6/2005	ENTRY ORDERING RETURN OF INMATE FOR HEARING
	1/27/2005	REPORT OF EXAMINER PURSUANT TO LAW. REPORT LOCATED IN CLERK OF COURTS OFFICE RM 315.
468	10/15/2004	ENTRY APPOINTING COURT CLINIC FORENSIC SERVICES FOR EXAMINATION
2	10/15/2004	ENTRY ORDERING RETURN OF DEFT FOR COURT PROCEEDINGS
116	10/14/2004	ENTRY OF CONTINUANCE 1/19/05
	8/13/2004	ENTRY DISMISSING APPEAL BY AGREEMENT AND WITHOUT PREJUDICE AND REMANDING CASE TO TRIAL COURT FOR EVIDENTIARY HEARING C-040286 IMAGE# 57 08/13/2004 ***COPY SENT TO DOC AND DEFENDANT ON 08/24/04, RSR***
	6/22/2004	COURT OF APPEALS OF HAMILTON COUNTY CASE NO. C040286
	5/7/2004	NOTICE OF APPEAL FILED NO. C040286 COPY SENT TO HAMILTON COUNTY PROSECUTOR
	5/7/2004	PRAECIPE OF DEFENDANT -APPELLANT JAMES DERRICK O'NEAL
	4/8/2004	NOTICE OF APPEALABLE JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES ENTITLED TO A COPY.
282	4/7/2004	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ENTRY DISMISSING SUCCESSIVE PETITION FILED PURSUANT TO ATKINS V VIRGINIA
281	4/7/2004	ENTRY OVERRULING MOTION FOR FUNDING MENTAL RETARDATION EXPERT AND DISCOVERY
	6/10/2003	DEFENDANT-PETITIONER'S REPLY MEMORANDUM IN RESPONSE TO THE PLAINTIFF'S MEMORANDUM IN OPPOSITION.
	6/3/2003	MEMORANDUM IN OPPOSITION TO FIRST SUCCESSIVE PETITION TO VACATE JUDGMENT OR SENTENCE.
	6/3/2003	MOTION TO ACCEPT RESPONSE OF PLAINTIFF INSTANTER
243	5/8/2003	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL 5/21/03
	4/24/2003	MOTION TO EXTEND TIME TO FILE A RESPONSE TO DEFENDANT'S SUCCESSIVE PETITION TO VACATE.
346	3/4/2003	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL MARCH 21,2003
	3/3/2003	MOTION TO EXTEND TIME TO FILE A RESPONSE TO DEFENDANT'S SUCCESSIVE PETITION TO VACATE.
247	2/4/2003	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL 2/17/03
	2/3/2003	MOTION TO EXTEND TIME TO FILE A RESPONSE TO DEFENDANT'S SUCCESSIVE PETITION TO VACATE.
165	1/7/2003	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL 2/3/03
	12/30/2002	MOTION TO EXTEND TIME TO FILE A RESPONSE TO DEFENDANT'S SUCCESSIVE PETITION TO VACATE.

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212	12/10/2002	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL DECEMBER 30,2002
242	11/26/2002	ENTRY GRANTING: ADDITIONAL TIME TO FILE RESPONSE UNTIL 12/30/02
	11/25/2002	MOTION TO EXTEND TIME TO FILE A RESPONSE TO DEFENDANT'S SUCCESSIVE PETITION TO VACATE.
	11/15/2002	FIRST SUCCESSIVE PETITION TO VACATE OR SET ASIDE JUDGMENT AND/OR SENTENCE PURSUANT TO OHIO REVISED CODE SECTIONS 2953.21 AND 2953.23
	5/15/2000	RECEIPT OF EXHIBITS 3 MANILLA ENVELOPES RECEIVED BY JERRY COSTA
	5/15/2000	RECEIPT OF RECORD OPX 1 BOX AND 1 POSTER
	5/15/2000	RECEIPT OF RECORD OPX 1 CASE FILE
	3/24/2000	COPY OF ENTRY DISMISSING APPEAL; FILED IN THE SUPREME COURT OF OHIO ON 3/8/00 SC#99-906
	3/24/2000	COPY OF JUDGMENT ENTRY AFFIRMING JUDGMENT OF THE COURT OF APPEALS; FILED IN THE SUPREME COURT OF OHIO ON 3/8/00 SC#98-1735
	3/24/2000	COPY OF MANDATE TO THE COURT OF APPEAL OF HAMILTON COUNTY, OHIO TO CARRY JUDGMENT TO EXECUTION; FILED IN THE SUPREME COURT OF OHIO ON 3/8/00 SC#98-1735
	2/22/2000	COPY OF ENTRY GRANTING STAY OF EXECUTION; FILED IN THE SUPREME COURT OF OHIO ON 2/17/00 SC#98-147
	2/18/2000	COPY OF RECONSIDERATION ENTRY DENYING MOTION; FILED IN THE SUPREME COURT OF OHIO ON 2/16/00 SC#98-147
	2/18/2000	COPY OF JUDGMENT ENTRY; FILED IN THE SUPREME COURT OF OHIO ON 1/5/00 SC#98-147
	2/18/2000	COPY OF MANDATE; FILED IN THE SUPREME COURT OF OHIO ON 2/18/00 SC#98-147
	5/14/1999	COPY OF NOTICE OF APPEAL OF APPELLANT JAMES DERRICK O'NEAL; FILED IN THE SUPREME COURT OF OHIO ON 5/10/99 SC#99-906
	3/26/1999	JUDGMENT ENTRY & DECISION AFFIRMING JUDGMENT OF TRIAL COURT (C980247 3/26/99 #114)
	8/27/1998	COPY OF NOTICE OF APPEAL OF APPELLANT JAMES DERRICK O'NEAL FILED IN THE SUPREME COURT OF OHIO ON 8/21/98 SC #98-1735
	4/20/1998	COURT OF APPEALS OF HAMILTON COUNTY CASE NO. C-980247
	3/18/1998	DOCKET STATEMENT FILED. C980247
	3/18/1998	NOTICE OF APPEAL FILED NO. C980247 COPY SENT TO HAMILTON COUNTY PROSECUTOR
213	2/17/1998	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISMISSING PETITION TO VACATE
	1/26/1998	COPY OF NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED ON 1/21/98 S.C. # 98-0147
51	1/16/1998	ENTRY APPOINTING COUNSEL FOR SUPREME COURT APPEAL ELIZABETH AGAR COUNSEL & ROXANN DIEFFENBACH CO-COUNSEL
	1/8/1998	DEATH PENALTY CASE. NOTICE OF APPEARANCE OF POSTCONVICTION COUNSEL.
109	12/19/1997	ENTRY APPOINTING COUNSEL FOR SUPREME COURT APPEAL ELIABETH E AGAR & ROXANN DIEFFENBACH
	12/12/1997	JUDGMENT ENTRY AFFIRMING JUDGMENT OF TRIAL COURT 12-03-97 #3 (C960392)
	9/16/1997	MOTION TO DISMISS PETITION TO VACATE
	9/3/1997	AMENDMENT TO PETITION FOR POSTCONVICTION RELIEF UNDER

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R.C. 2953.21

	7/7/1997	MOTION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING.
0173	7/7/1997	ENTRY EXTENDING TIME UNTIL 9/25/97 TO FILE RESPONSE TO POST-CONVICTION
	7/2/1997	PETITION FOR POST-CONVICTION RELIEF UNCEER R.C.2953.21
	6/10/1997	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	5/13/1997	COMPLETE TRANSCRIPT OF PROCEEDINGS #C960392
	1/3/1997	MOTION TO SUPPRESS C960392
	11/1/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	11/1/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	10/30/1996	COMPLETE TRANSCRIPT OF PROCEEDINGS (PRETRIAL MOTIONS)(2 VOLS) C960392
	10/29/1996	COMPLETE TRANSCRIPT OF PROCEEDINGS VOLUMES I THRU V #C960392
	9/30/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	9/30/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	8/19/1996	COURT OF APPEALS OF HAMILTON COUNTY CASE NO. C-960392
0042	7/20/1996	ENTRY APPROVING COUNSEL FEES \$17000
0028	7/1/1996	ENTRY ALLOWING ADDITIONAL COMPENSATION
0294	6/15/1996	ENTRY APPROVING COUNSEL FEES \$12500
0101	6/10/1996	ENTRY ALLOWING ADDITIONAL COMPENSATION
	5/22/1996	DOCKET STATEMENT FILED. C960392
	5/22/1996	NOTICE OF APPEAL FILED NO. C960392 COPY SENT TO HAMILTON COUNTY PROSECUTOR
0011	5/10/1996	ENTRY RESETTING EXECUTION DATE FROM 5/30/96 TO 11/5/96
0043	5/10/1996	ENTRY OVERRULING MOTION FOR NEW TRIAL
	4/26/1996	CRIMINAL STATE COSTS SATISFIED
	4/22/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	4/22/1996	CLERK'S TRANSCRIPT FEE FOR AN INDIGENT DEFENDANT - FILED
	4/12/1996	MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL.
0016	12/22/1995	OPINION
0064	12/18/1995	ENTRY DENYING: DEFT'S MOTION FOR NEW TRIAL
	12/14/1995	MOTION FOR NEW TRIAL.
0013	12/11/1995	JUDGMENT ENTRY: SENTENCE: INCARCERATION CT 1 AGG MURDER SENT DEATH. CT 2 AGG MURDER SENT DEATH. CT 4 AGG BURGLARY 10 TO 25YRS (10YRS ACTUAL) 3YRS ACTUAL ON FIREARM SPEC. IN CTS 1,2,& 4 CONCURR. W/EACH OTHER BUT CONSEC. TO & PRIOR TO UNDERLY.SENT IN CTS 1,2,& 4. CTS 1 & 2CONCURR. CT 4 CONSEC.CTS 1 & 2CREDIT 730DYS. PAY COSTS.
0073	12/11/1995	ENTRY GRANTING: DEFT'S MOTIONS
0017	12/11/1995	ENTRY APPOINTING APPELLATE COUNSEL. DALE SCHMIDT & ELIZABETH AGAR
0075	12/11/1995	APPLIC. REQUESTING PERMISSION TO BROADCAST,TELEVISE,PHOTO., RECORD COURTROOM PROCEEDINGS. WLWT-TV
0097	12/11/1995	ENTRY OVERRULING DEFT'S MOTIONS
0233	11/29/1995	AMENDED ENTRY AUTHORIZING APPOINTMENT OF EXPERT AND PAYMENT OF FEES FOR SAME.
0014	11/28/1995	ENTRY AUTHORIZING APPOINTMENT OF EXPERT OF PAYMENT OF

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FEEES FOR SAME

0255	11/21/1995	ENTRY APPOINTMENT OF EXPERT AND PAYMENT OF FEES FOR SAME
0258	11/21/1995	ENTRY AUTHORIZING APPOINTMENT OF EXPERT & PAYMENT OF FEES FOR SAME
0131	11/8/1995	JURY VERDICT OF CT 1 WAS FOUND GUILTY OF COMMITTING IS SUFFICIENT TO OUTWEIGH THE MITIGATING FACTORPRESENT IN THIS CASE, & WE THEREFORE RECOMMEND THAT THE SSNT OF DEATH TO BE IMPOSED.
0158	11/8/1995	CAUSE CONCLUDED SENTENCE DEFERRED UNTIL 12/11/95. REMANDED.
0132	11/8/1995	JURY VERDICT OF WAS FOUND GUILTY OF COMMITTINGIS SUFFICIENT TO OUTWEIGHT THEMITIGATING FACTORS PRESENT IN THIS CASE, & WE THEREFORE RECOMMEND THAT THE SENT OF DEATH BE IMPOSED
0136	11/6/1995	CAUSE PROGRESSED 9TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 11/8/95
0093	11/2/1995	JURY VERDICT OF GUILTY AGG BURLGARY CT 4. WE, THE JURY FURTHER FIND THATTHE DEFT DID HAVE ON OR ABOUT HIS PERSON, OR UNDER HIS CONTROL, A FIREARM WHILE COMMITTING THE OFFENSE OF AGG BURGLARY
0095	11/2/1995	JURY VERDICT OF NOT GUILTY OF AGG MURDER IN CT 3
	11/2/1995	FURTHER FIND THAT THE DEFT DIDHAVE ON OR ABOUT HIS PERSON, OR UNDER HIS CONTROL, A FIREARM WHILE COMMITTING THE OFFENSE OF AGG MURDER IN CT 2
	11/2/1995	AS SET FORTHE IN CP 2 CT 1 TO WIT' THAT THE DEFT AS THE PRINCIPAL OFFENDER COMMITTED THE OFFENSE OF AGG MURDER OF CAROL ANN LEE O'NEAL WHILE THEDEFT WAS COMMITTING OR ATTEMPTING TO COMMIT OR FLEEINIMMEDIATELY AFTER COMMITTING OR ATTEMPTING TO COMMIT THE OFFENSE OF AGG. BURGLARY. WE
0200	11/2/1995	CASE CONT' IN PROGRESS UNTIL 11/6/95.
0201	11/2/1995	JUDGMENT OF ACQUITTAL OF VERDICT *** CT 3 & SPEC TO CT 3 & SPEC 1 TO EACH CTS 1 & 2 ONLY ***
0114	11/2/1995	CAUSE PROGRESSED 8TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 11/6/95
	11/2/1995	THE JURY FURGERH FIND THAT THEDEFT DID HAVE ON OR ABOUT HIS PERSON, OR UNDER HIS CONTROL, A FIREARM WHILE COMMITTING THEOFFENSE OF AGG MURDER IN CT 1
0100	11/2/1995	JURY VERDICT OF GUILTY AGG MURDER IN CT 1. WE,THE JURY FURTHER FIND THE DEFTNOT GUILTY OF AGG CIRCUMSTANCESAS SET FORTH IN SPEC 1 TO CT 1TO WIT; A COURSE OF CONDUCT INVOLVING THE PURPOSEFUL KILLING OR ATTEMPT TO KILL TWOOR MORE PERSONS BY DEFT. WE THE JURY FURTHER FIND DEFT GUILTY OF THE AGG CIRCUMSTANCE
	11/2/1995	IN SPEC 2 TO CT 2 TO WIT' THAT THE DEFT AS THE PRINCIPALOFFENDER COMMITTED THE OFFENSEOF AGG MURDER OF CAROL ANN LEE O'NEAL WHILE THE DEFT WAS COMMITTING OR ATTEMPTING TO COMMIT OR FLEEING IMMEDIATELY AFTER COMMITTING OR ATTEMPTINGTO COMMIT THE OFFENSE OF AGG. BURLGLARY. WE, THE JURY
0096	11/2/1995	JURY VERDICT OF GUILTY AGG MURDER CT 2. WE,THEJUEY FIND THE DEFT NOT GUILTY OF AGG CIRCUSTANCES AS SET FORTH IN SPEC NO 1 TO CT 2 TO WIT: A COURSE OF CONDUCT INVOLVING THE PURPOSEFUL KILLING OR ATTPT TO KILL TWO OR MORE PERSONS. WE, THE JURY FIND THE DEFT GUILTY OF THE AGG CIRCUMSTANCES AS SET FORTH
0168	11/1/1995	CAUSE PROGRESSED 6TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 11/1/95
0231	11/1/1995	CAUSE PROGRESSED 7TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 11/2/95

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10/30/1995 DEFENDANT'S REQUEST FOR ADDITIONAL INSTRUCTION.

0341 10/30/1995 CAUSE PROGRESSED 5TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 10/31/95

0259 10/27/1995 CAUSE PROGRESSED 4TH DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 10/30/95

0457 10/26/1995 CAUSE PROGRESSED 3RD DAY CONTINUED TO 10/27/95

0310 10/25/1995 ORDER FOR JURY TO VIEW PREMISES

0386 10/25/1995 JURY IMPANELED AND SWORN ON VOIR DIRE JURY IMPANELED & SWORN

0387 10/25/1995 CAUSE PROGRESSED 2ND DAY, TESTIMONY ADDUCED IN PART & CONT' UNTIL 10/26/95

0172 10/24/1995 ENTRY REQUESTING OFFICIAL STENOGRAPHER

0175 10/24/1995 CAUSE PROGRESSED 1ST DAY, JURY SELECTION IN PROGRESS TESTIMONY ADDUCED IN PART & CONT' UNTIL 10/25/95

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED JAMIE WRIGHT

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANDRE GRIFFIN

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED RICARDO LEE

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED LASHAUNDA LEE

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLARENCE CODY

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED SANCHEZ LEE

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED PATRICIA CARR

9/26/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED TIMOTHY SCHOPMEYER

9/25/1995 SUBPOENA FOR WITNESS ISSUED TO PATRICIA CARR JAMIE WRIGHT TIMOTHY SCHOPMEYER SANCHEZ LEE LASHAUNDA LEE CLARENCE CODY RICARDO LEE ANDRE GRIFFIN

8/24/1995 SUBPOENA FOR WITNESS ISSUED TO NATALIE LEE, ANDRE GRIFFIN RETHA LEE, RICARDO LEE CLEMY LEE, CLARENCE CODY LASHAUNDA LEE, SANCHEZ LEE PATRICIA CARR, PATRICIA CARR ANITA ARTIS, DANTOINE POSEY JAMIE WRIGHT, TIMOTHY SCHOPMEYER

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED NATALIE LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANDRE GRIFFIN

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLEMY LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLARENCE CODY

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED RETHA LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANITA ARTID

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED TIMOTHY SCHOPMEYER

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED DANTOINE POSEY

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED PATRICIA CARR

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED RICARDO LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED LASHAUNDA LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED SANCHEZ LEE

8/24/1995 SUBPOENA FOR WITNESS RETURNED AND ENDORSED JAMIE WRIGHT

0508 8/3/1995 SUPREME COURT OF OHIO ENTRY DENIES LEAVE FOR APPEAL & APPEAL IS DISMISSED

0127 7/26/1995 ENTRY OF CONTINUANCE 10/23/95

0023 5/4/1995 ENTRY APPOINTING COUNSEL FOR SUPREME COURT APPEAL

0430 5/1/1995 ENTRY OF CONTINUANCE 8/21/95

4/26/1995 JUDGMENT ENTRY & OPINION REVERSING JUDGMENT & REMANDING TO TRIAL COURT (C940652 4/26/95 #2)

0009 11/2/1994 ENTRY

0010 11/2/1994 ENTRY

10/27/1994 APPLICATION FOR PAYMENT OF MITIGATION SPECIALIST

9/14/1994 COURT OF APPEALS OF HAMILTON COUNTY CASE NO. C-940652

0018 8/16/1994 ENTRY APPOINTING APPELLATE COUNSEL. ELIZABETH E AGAR

0023 8/16/1994 ENTRY GRANTING: DISMISSAL & STAY TOLLING TIME FOR PURPOSES OF APPEAL

8/16/1994 DOCKET STATEMENT FILED. C940652

0064 8/16/1994 APPLIC. REQUESTING PERMISSION TO BROADCAST,TELEVISION,PHOTO., RECORD COURTROOM PROCEEDINGS. CINTI POST

0127 8/16/1994 ENTRY OF CONTINUANCE 8/16/94

8/16/1994 NOTICE OF APPEAL FILED NO. C940652 COPY SENT TO HAMILTON COUNTY PROSECUTOR

8/11/1994 STATE'S RESPONSE TO DEFENDANT'S DEMAND FOR DISCOVERY.

8/11/1994 MOTION WITHDRAWING DEFENDANT'S REQUEST FOR THREE JUDGE PANEL AND REQUESTING A TRIAL BY JURY

0157 8/11/1994 ENTRY WITHDRAWING REQUEST FOR THREE JUDGE PANEL & REQUESTING JURY TRIAL

7/28/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED DANTOINE POSEY

7/25/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED NATALIE LEE

7/25/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANITA ARTIS

7/25/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ARLENE BENNETT

7/25/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED KENNETH TAYLOR

7/25/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED TIMOTHY SCHOPMEYER

7/22/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED DWIGHT HILL

7/22/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED BY FOREIGN SHERIFF CLERMONT COUNTY SERVED KAREN HUDSON

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED JAMIE WRIGHT

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ROBERT WILLIAMS

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED LASHAWADA LEE

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLARENCE CODY

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED RICHARDO LEE

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLEMY LEE

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANDRE GRIFFIN

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED SANCHEZ LEE

7/21/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED PATRICIA CARR

7/20/1994 SUBPOENA FOR WITNESS ISSUED TO CLEMY LEE, NATALIE LEE, ANDRE GRIFFIN, RICHARDO LEE, CLARENCE CODY, LASHAWNDA LEE, SANCHEZ LEE, ROBERT WILLIAMS, KENNETH TAYLOR, ANITA ARTIS, PATRICIA CARR, DANTOINE POSEY, JAMIE WRIGHT, ARLENE BENNETT, DWIGHT HILL, TIMOTHY SCHOPMEYER

7/20/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED BY FOREIGN SHERIFF CLERMONT COUNTY SERVED KAREN HUDSON

7/20/1994 SUBPOENA FOR WITNESS ISSUED TO PREPAID WITNESS KAREN HUDSON

0170 6/16/1994 ENTRY OVERRULING MOTION TO SUPPRESS.

0167 5/27/1994 ENTRY OF CONTINUANCE 6/16/94

0009 5/26/1994 ENTRY AUTHORIZING APPOINTMENT OF EXPERT AND PAYMENT OF FEES FORSAME

0074 5/9/1994 ENTRY OF CONTINUANCE 8/15/94

0187 5/6/1994 CERTIFICATION BY TRIAL ATTYS- DEATH PENALTY CASE JURY WAIVER

5/5/1994 STATE'S RESPONSE TO MOTION TO DISMISS

4/29/1994 MOTION TO DISMISS AGGRAVATED BURGLARY(2911.11,R.C.) SPECIFICATION 2 TO COUNT 1: SPECIFICATION 2 TO COUNT 2

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY EVIDENCE BEARING ON THE CHARACTER OF THE VICTIM

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION FOR WRITTEN JURY INSTRUCTION

4/25/1994 STATE'S RESPONSE TO DEFENDANTS MOTION TO ALLOW DEFENSE TO VIEW CRIME SCENE

4/25/1994 STATE'S RESPONSE TO DEFENDANTS MOTION TO PRESERVE AND CATALOGALL PHYSICAL EVIDENCE

4/25/1994 STATE'S RESPONSE TO DEFENSE MOTION TO ALLOW DEFENSE TO ARGUE FIRST AND LAST

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO HAVE REASONS FOR DEFENSE OBJECTIONSAND REASONS FOR OVERRULING DEFENDANT'S OBJECTIONS PLACED OF RECORD

4/25/1994 STATE'S RESPONSE TO MOTION TO COMPEL DISCLOSURE OF PROSECUTING ATTORNEY'S JURY SELECTION DATA

4/25/1994 STATE'S RESPONSE TO DEFANDANT'S MOTION TO INSTRUCT THE JURY TO CONSIDER MERCY IN ITS MITIGATION PHASE DELIBERATIONS

4/25/1994 STATE'S RESPONSE TO DEFANDANT'S MOTION TO APPOINT NEUROPSYCHOLOGIST

4/25/1994 STATE'S RESPONSE TO DEFANDANT'S MOTION TO SUBMIT QUESTIONNAIRE TO PROSPECTIVE JURORS

4/25/1994 STATE'S RESPONSE TO DEFANDANT'S MOTION FOR COMPREHENSIVE VOIR DIRE

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO LIMIT PROSECUTOR'S ARGUMENT TO THE AGGRAVATING CIRCUMSTANCES PROVEN AT THE FIRST PHASE

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO PROHIBIT THE PROSECUTOR FROM ARGUING AND THE COURT FROM GIVING INSTRUCTIONS REGARDING STATUTORY MITIGATING FACTORS NOT RAISED BY THE DEFENSE

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO PROHIBIT REFERENCES TO THE JURY THAT A VERDICT AS TO DEATH IS ONLY A RECOMMENDATION

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL LAW ENFORCEMENT OFFICIALS TO TURN OVER AND ADVISE .PROSECUTING ATTORNEY OF ALL INFORMATION ACQUIRED DURING THE COURSE OF INVESTIGATION

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE

4/25/1994 STATE'S REPLY IN OPPOSITION TO THE DEFENDANT'S MOTION FOR DISCLOSING WITNESS STATEMENTS PRIOR TO TRIAL

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO EXCLUDE REFERENCES TO DEFENDANT'S CRIMINAL RECORD AND TO EXCLUDE ANY EVIDENCE RELATING TO OTHER CRIMES, WRONGS OR ACTS.

4/25/1994 STATE'S REPLY TO DEFENDANT'S MOTION TO PROHIBIT DEATH QUALIFICATION OF JURY

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO PROHIBIT DISPLAY OF EVIDENTIARY EXHIBITS UNTIL ADMITTED

4/25/1994 STATE'S RESPONSE TO MOTION RULING ON NUMBER OF PEREMPTORY CHALLENGES

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO INSULATE THE VENIRE AND JURY

4/25/1994 STATE'S RESPONSE TO MEMORANDUM FOR SEQUESTRATION OF JURORS FOR DURATION OF TRIAL

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO REQUIRE THE JURY TO ARTICULATE THE METHOD BY WHICH IT WEIGHS THE AGGRAVATING CIRCUMSTANCES AGAINST THE MITIGATING FACTORS

4/25/1994 STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL PROSECUTOR TO DISCLOSE DEATH PENALTY DATA

0059 4/19/1994 ENTRY AUTHORIZING APPOINTMENT OF EXPERT AND PAYMENT OF FEES FOR SAME

0061 4/19/1994 ENTRY WITHDRAWING JURY DEMAND & REQUESTING THREE-JUDGE PANEL

4/15/1994 MOTION TO SUPPRESS EVIDENCE INCLUDING BUT NOT LIMITED TO STATEMENTS AND PHYSICAL EVIDENCE ON THE GROUNDS THAT IT WAS ILLEGALLY OBTAINED

4/15/1994 MOTION TO EMPLOY EXPERTS AND AUTHORIZE PAYMENT OF FEES OF SAME

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4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED DARION LEE,
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HILL,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED NATALIE LEE,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED RICARDO
LEE,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED SANCHEZ
LEE,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ROBERT
WILLIAMS,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED PATRICIA
EARR,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANITA ARTIS,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED ANDRE
GIFFIN,
4/8/1994 SUBPOENA FOR WITNESS RETURNED AND ENDORSED CLEMY LEE,
4/6/1994 SUBPOENA FOR WITNESS ISSUED TO CLEMY LEE NATALIE LEE
ANDRE GIFFIN RICARDO LEE CLARENCE CODY LASHAWNDA LEE
SANCHEZ LEE ROBERT WILLIAMS KENNETH TAYLOR ANITA ARTIS
4/6/1994 SUBPOENA FOR WITNESS ISSUED TO PREPAID WITNESS KAREN
HUDSON
4/6/1994 SUBPOENA FOR WITNESS ISSUED TO PATRICIA FARR DARION LEE
JAMIE WRIGHT ARLENE BENNETT DWIGHT HILL TIMOTHY
SCHOPMEYER
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3/28/1994 MOTION FOR A RULING ON NUMBER OF PEREMPTORY
CHALLENGES,
3/28/1994 MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE,
3/28/1994 MOTION TO HAVE REASONS FOR DEFENSE OBJECTING AND
REASONS FOR OVERRULING DEFENSE OBJECTIONS PLACED ON
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3/28/1994 MOTION TO COMPEL LAW ENFORCEMENT OFFICIALS TO TURN OVER
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3/28/1994 MOTION FOR SEQUESTRATION OF JURORS FOR DURATION OF
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3/28/1994 MOTION IN LIMINE TO EXCLUDE REFERENCES TO DEFENDANT'S
CRIMINAL RECORD,
3/28/1994 MOTION TO PROHIBIT PROSECUTOR FROM ARGUING, AND THE
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3/28/1994 MOTION TO PROPERLY PRESERVE AND CATALOG ALL PHYSICAL
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3/28/1994 MOTION TO PROHIBIT REFERENCES TO THE JURY THAT A VERDICT
AS TO DEATH IS ONLY A RECOMMENDATION
3/28/1994 MOTION TO ALLOW THE DEFENSE TO ARGUE FIRST AND LAST AT
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MOTION TO REQUIRE THE JURY TO ARTICULATE THE METHOD BY

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3/28/1994 WHICHIT WEIGHS THE AGGRAVATING AGAINST THE MITIGATING CIRCUMSTANCES,

3/28/1994 MOTION TO SUBMIT JURY QUESTIONNAIRE,

3/28/1994 REQUEST FOR NOTICE OF INTENT TO USE EVIDENCE,

3/28/1994 MOTION TO PROHIBIT DEATH- QUALIFICAITON OF JURY; IN THE ALTERNATIVE,IF NECESSARY.TO SEAT A SEPARATE JURY DURING PENALTY PHASE OF TRIAL,

3/28/1994 MOTION FOR DISCLOSURE OF WITNESS STATEMENTS PIOR TO TRIAL,

3/28/1994 MOTION TO INSULATE THE VENIRE AND JURY,

3/28/1994 MOTION IN LIMINE TO PROHIBIT DISPLAY OF EVIDENTIARY EXHIBIT UNTIL PROFFERED,

3/28/1994 MOTION FOR COMPREHENSIVE VIOR DIRE,

3/28/1994 MOTION IN LIMINE TO LIMIT PROSECUTORSARGUMENT TO THE AGGRAVATING CIRCUMSTANCE PROVEN AT THE GUILT PHASE,

3/28/1994 MOTION FOR WRITTEN JURY INSTRUCTION AND OPPORTUNITY TO REVIEW,

3/28/1994 MOTION FOR AN ORDER TO ALLOW DEFENSE TO VIEW CRIME SCENE,

3/28/1994 MOTION TO COMPEL PROSECUTING ATTORNEYTO DISCLOSE DEATH PENALTY DATA

0261 2/4/1994 ENTRY OF CONTINUANCE 2/24/94

0098 1/31/1994 ENTRY APPOINTING MITIGATION SPECIALIST

1/24/1994 OPPOSITION TO DEFENDANT'S MOTION TO EMPLOY PSYCHOLOGIST.

1/14/1994 STATE'S RESPONSE TO DEFENDANT'S DEMAND FOR DISCOVERY.

0206 1/14/1994 ENTRY OF CONTINUANCE 6/6/94

1/10/1994 MOTION TO EMPLOY EXPERTS AND AUTHORIZE PAYMENTS OF FEES OF SAME.

0165 1/7/1994 ENTRY OF CONTINUANCE 1/14/94

12/28/1993 DEMAND FOR DISCOVERY

12/28/1993 REQUEST FOR BILL OF PARTICULARS

12/27/1993 NOTICE TO SUPREME COURT OF OHIO OF FILING OF INDICTMENT CHARGING AGGRAVATED MURDER W/SPEC (S) OF AGGRAVATING CIRCUMSTANCES 2929.021A R.C.

0009 12/22/1993 PLEA OF NOT GUILTY ENTERED AT ARRAIGNMENT. \$1,000,000

0009 12/22/1993 COUNSEL ASSIGNED DALE SCHMIDT & JOHN KELLER

0014 12/22/1993 APPOINTMENT OF TRIAL COUNSEL IN A CAPITAL CASE DALE G SCHMIDT & JOHN T KELLER

0114 12/22/1993 APPLIC. REQUESTING PERMISSION TO BROADCAST,TELEWISE,PHOTO., RECORD COURTROOM PROCEEDINGS. CINTI POST

0236 12/22/1993 ENTRY OF CONTINUANCE 1/7/94

0113 12/22/1993 APPLIC. REQUESTING PERMISSION TO BROADCAST,TELEWISE,PHOTO., RECORD COURTROOM PROCEEDINGS. CINTI. ENQUIRER

12/21/1993 SIMON L. LEIS JR., SHERIFF: I HAVE IN CUSTODY AND HAVE SERVED COPY OF INDICTMENT ON SAID DEFENDANT BY PAUL COSGROVE DEPUTY

0068 12/20/1993 ENTRY APPOINTING COUNSEL DALE SCHMIDT

12/16/1993 INDICTMENT REPORTED AND FILED. INDICTMENT FOR AGGRAVATED MURDER 2903.01 R.C. (CAPITAL) W/SPEC; ATTEMPT (AGGRAVATED MURDER) 2923.02 R.C. W/SPEC; AGGRAVATED BURGLARY 2911.11

R.C. W/SPEC

12/16/1993 PRECIPE FOR WARRANT FILED AND WARRANT ISSUED.

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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
CRIMINAL DIVISION

FILED
NOV 15 11 04 AM '02
JAMES C. GREGG, JR.
CLERK OF COURTS
HAMILTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff-Respondent,

CASE NO. B-939022

v.

JUDGE RALPH WINKLER

DEATH PENALTY CASE

JAMES DERRICK O'NEAL,

Evidentiary hearing requested

Defendant-Petitioner.

FIRST SUCCESSIVE PETITION TO VACATE OR SET ASIDE
JUDGMENT AND/OR SENTENCE PURSUANT TO
OHIO REVISED CODE SECTIONS 2953.21 AND 2953.23

(1) James Derrick O'Neal hereby files this first successive petition to vacate or set aside judgment and/or sentence pursuant to R.C. 2953.21 and R.C. 29.53.23 on the ground that the judgment and/or sentence is void or voidable as a result of the denial of rights guaranteed by Ohio law and the Constitution of the United States. Petitioner meets the requirements for a successive postconviction petition because the United States Supreme Court has now "recognized a new federal...right that applies retroactively to persons in the petitioner's situation...." and "but for the constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the sentence of death." R.C. 2953.23; Atkins v. Virginia, ___ U.S. ___, 122 S.Ct. 2242, 153 L.Ed.2d 335 (June 20, 2002). Petitioner requests an evidentiary hearing on this ground for relief.

Jurisdictional Facts:



(2) James O'Neal was convicted of aggravated murder and sentenced to death on December 11, 1995.

(3) His conviction and sentence of death were affirmed by the Court of Appeals of Hamilton County, First Appellate District, on December 12, 1997. State v. O'Neal, Hamilton App. No. C-960392, 1997 Ohio App. LEXIS 5510 (1997)(unreported).

(4) The Ohio Supreme Court affirmed the conviction and sentence of death on January 5, 2000. State v. O'Neal, 87 Ohio St.3d 402, 721 N.E.2d 73 (2000).

(5) On January 18, 2000 Petitioner filed a motion for reconsideration of the Ohio Supreme Court's decision on direct appeal. Reconsideration was denied on February 16, 2000. State v. O'Neal, 88 Ohio St.3d 1428, 723 N.E.2d 1115 (2000).

(6) Petitioner O'Neal's conviction and sentence became final on May 21, 2001 when the United States Supreme Court denied his petition for writ of certiorari. James Derrick O'Neal v. Ohio, 532 U.S. 1037, 121 S.Ct. 1997, 149 L.Ed.2d 1001 (2001).

(7) O'Neal filed his original petition for postconviction relief with this Court on July 2, 1997. This Court denied the petition without discovery or an evidentiary hearing on February 17, 1998.

(8) Petitioner O'Neal filed an appeal from the denial of his original postconviction petition to the Court of Appeals for Hamilton County, First Appellate District, which affirmed the denial of his postconviction petition on March 26, 1999. State v. O'Neal, Hamilton App. No. C-980247, 1999 Ohio App. LEXIS 1207 (1999) (unreported).

(9) The Ohio Supreme Court denied leave to appeal the Court of Appeals judgment affirming the denial of the original petition for postconviction relief on March 8, 2000. State v. O'Neal, 88 Ohio St.3d 1441, 724 N.E.2d 1154 (2000).

(10) Petitioner filed a timely application for reopening of the direct appeal in the Court of Appeals of Hamilton County, First Appellate District on March 12, 1998. On July 9, 1998 the Court of Appeals denied the application for reopening. State v. O'Neal, Hamilton App. No. C-960392 (July 9, 1998)(unreported).

(11) The Ohio Supreme Court affirmed the Court of Appeals' denial of Petitioner's application for the reopening of his direct appeal on March 8, 2000. State v. O'Neal, 88 Ohio St.3d 179, 724 N.E.2d 423 (2000).

(12) On May 21, 2002 Petitioner O'Neal filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of Ohio, Western Division. James Derrick O'Neal v. Margaret Bagley, Warden, Case No. C-1-2-357. The case is presently in its preliminary stages.

First Ground For Relief

(13) James O'Neal is mentally retarded.

(14) The Eighth Amendment to the United States Constitution prohibits the execution of a person who is mentally retarded. Atkins v. Virginia, __ U.S. __, 122 S.Ct. 2242, 153 L.Ed.2d 335 (June 20, 2002).

(15) James O'Neal has consistently been evaluated as functioning in the borderline to mildly retarded range of intelligence and as having difficulty in the performance area. Trial Tr. 977, 1001.

(16) Dr. David Chiappone, a clinical psychologist, testified in the mitigation phase of the trial that he administered a number of tests to Petitioner and that Petitioner "scored in the what are called the border range of mental retardation. [sic] He's not retarded, but he functions at the

second or third percentile of the general population." Trial Tr. at 981. He testified that Petitioner had difficulty performing some simple tests that the Doctor administered. "And so at that point I thought there was what we call organicity above and beyond limited intellect. And at that point I recommended we have a neuropsychologist who specializes in dysfunctions of the brain to do further testing to make sure we didn't miss anything." Trial Tr. at 982. Dr. Chiappone testified that Petitioner O'Neal suffered from "borderline mental retardation based on the IQ test and substantiated by his educational data." Trial Tr. at 987. Finally, Dr. Chiappone stated that Petitioner had a "[l]ack of coping skills" which, along with other factors, "made it more difficult for him to effectively problem solve." Trial Tr. at 996.

(17) Dr. Chiappone referred Petitioner to Dr. Robert Tureen, a clinical neuropsychologist at the Mayfield Neurological Institute in Cincinnati. Dr. Tureen also testified in the mitigation phase of the trial. Trial Tr. at 997.

(18) Dr. Tureen did further testing of Petitioner which showed a "longstanding type of disturbance" which he called "minimal cerebral dysfunction." Trial Tr. at 1001. Dr. Tureen testified that Petitioner had a very poor academic performance throughout his limited academic career and that "early psychological testing that was done in '68 stated there was evidence of organicity or brain damage." Trial Tr. at 1002.

(19) As to Petitioner O'Neal's level of intellectual functioning, Dr. Tureen described it as being "in the borderline to mildly retarded range." Trial Tr. at 1002. Dr. Tureen concluded that Petitioner is "an individual who's going to have some limitations on how well they're [sic] going to be able to function. *** By cognitive thinking general problems involving memory, spatial and statistical skills, language usage, as well as motor skills. [sic] And on that particular exam he performed well into the impaired range. You take that performance and put it together with the

IQ level and you see an individual who is going to have some sort of difficulties in adjusting in the world." Trial Tr. at 1003. He added that persons like Petitioner would have "some real limitations of what they're going to be able to do in life and what they're going to be able to accomplish." Trial Tr. at 1005. Finally, Dr. Tureen testified on cross-examination that Petitioner "was functioning in the mildly mentally retarded to borderline range." Trial Tr. at 1009.

(20) In Ohio, a "mentally retarded person" is defined as "a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period." R.C. 5123.01(O).

(21) Intellectual functioning requires an evaluation of actual intellectual functioning which is not determined solely by test scores, but instead is determined by a court based on test scores, expert testimony and other pertinent evidence. In re Elmore, 13 Ohio App.3d 79, 84, 468 N.E.2d 97 (Franklin App. 1983).

(22) In Atkins v. Virginia the United States Supreme Court recognized the definition of mental retardation developed by the American Association on Mental Retardation (AAMR) and the American Psychiatric Association (APA). The AAMR defines mental retardation as "characterized by significant subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following adaptive areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work. Mental retardation manifests itself before age 18." Mental Retardation: Definition, Classification and Systems of Supports, at page 5 (9th ed. 1992); Atkins v. Virginia, *supra*, at n 3.

The APA's definition of mental retardation is essentially the same as the AAMR's, with the addition that "mild" mental retardation is typically used to describe people with an IQ level

of 50-55 to approximately 70. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, at pages 42-43 (4th ed. 2000).

Petitioner O'Neal, according to the testimony of both Dr. Chiappone and Dr. Tureen, suffers from both significant subaverage intellectual functioning as well as adaptive limitations in communications, home living, social skills, academics, and leisure and work.

(23) "General intellectual functioning" is defined as the intelligence quotient obtained by an assessment with one or more of the standardized, individually administered intelligence tests. "Significantly subaverage intellectual functioning" is defined as "an IQ of *about* 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement error of approximately 5 points in assessing IQ. . . ." Diagnostic and Statistical Manual of Mental Disorders, at pages 39-40 (4th ed. 1994) (emphasis added).

(24) Persons afflicted with mild mental retardation may acquire academic skills up to approximately the sixth grade level. Diagnostic and Statistical Manual of Mental Disorders, at pages 39-41 (4th ed. 1994).

(25) Mental retardation is never determined by IQ alone. It is assessed by a combination of IQ and adaptive functioning skills. See R.C. 5123.01(O); see also, A License To Kill: The Categorical Exemption of the Mentally Retarded from the Death Penalty, David L. Rumley, 24 St. Mary's University Law Journal (1993), n. 98.

(26) Petitioner's low IQ, combined with his significant deficiencies in adaptive functioning, render him mentally retarded. As a consequence, his death sentence should be vacated.

Demand For Relief

Petitioner James O'Neal requests the following relief:

1. That his sentence of death be vacated and that a life sentence be imposed;
2. That this Court grant an evidentiary hearing pursuant to R.C. 2953.21 and 2953.23;
3. That this Court appoint the undersigned counsel to represent Petitioner O'Neal in these postconviction proceedings;
4. That this Court grant Petitioner O'Neal's counsel permission to conduct additional discovery;
5. That this Court allow Petitioner's counsel to hire an expert at court expense to assist them in presenting this ground for relief; and
6. That this Court grant such other and further relief as it may deem just and proper.

Respectfully submitted,



JOHN J. GIDEON (0008151)
(Trial Attorney)
1093 South Fourth Street
Columbus, Ohio 43206-2621
Phone: (614) 444-9906
Facsimile: (614) 444-1885

and



MICHAEL W. KRUMHOLTZ (0009099)
(Co-Counsel)
Bieser, Greer & Landis LLP
6 North Main Street, Suite 400
Dayton, Ohio 45402-1908
Phone: (937) 223-3277
Facsimile: (937) 223-6339

COUNSEL FOR PETITIONER

SERVICE

R.C. 2953.21(B) provides: "The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. The petitioner need not serve a copy of the petition on the prosecuting attorney. The clerk of the court in which the petition is filed immediately shall forward a copy of the petition to the prosecuting attorney of that county."

THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

CRIMINAL DIVISION

FILED
NOV 25 3 14 PM '02
JAMES GISSLETT
CLERK OF COURTS
HAMILTON COUNTY, OHIO

STATE OF OHIO

NO. B-939022

Plaintiff-Respondent

(Judge Schweikert)

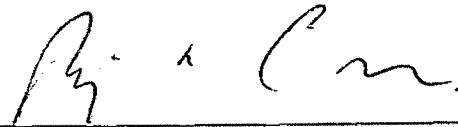
VS.

**MOTION TO EXTEND TIME TO
FILE A RESPONSE TO
DEFENDANT'S SUCCESSIVE
PETITION TO VACATE**

JAMES DERRICK O'NEAL

Defendant-Petitioner

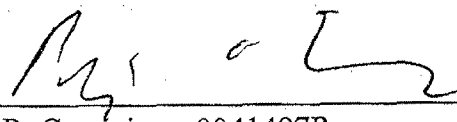
Now comes the State of Ohio, plaintiff-respondent, in the above entitled matter, and does hereby request a continuance until December 30, 2002, to file a response to defendant-petitioner's successive petition to vacate, which was filed on November 15, 2002, for the reason that counsel for the plaintiff-respondent has an extensive workload.



Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
513/946-3012

CERTIFICATION

I hereby certify on this 21 day of November, 2002, I have posted a copy of the above entitled document to counsel for the defendant by posting same in the United States mail addressed to John J. Gideon (0008151), Attorney at Law, 1093 South Fourth Street, Columbus, Ohio 43206-2621, and Michael W. Krumholtz (0009099), Attorney at Law, Bieser, Greer & Landis, LLP, 6 North Main Street, Suite 400, Dayton, Ohio 45402-1908.

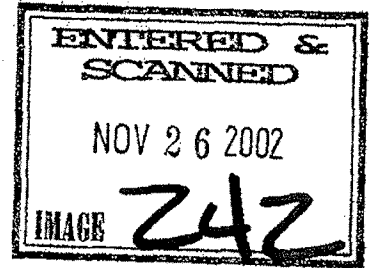


Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney



D52610549

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION



STATE OF OHIO

NO. B-939022

Plaintiff-Respondent

vs.

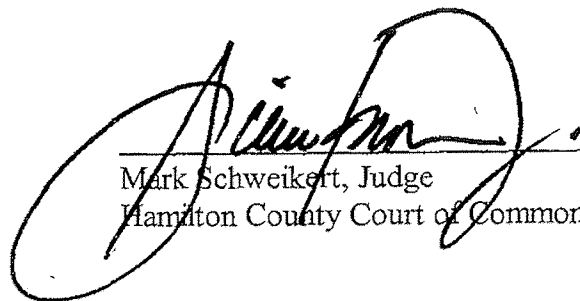
JAMES DERRICK O'NEAL

ENTRY GRANTING ADDITIONAL
TIME TO FILE RESPONSE UNTIL
DECEMBER 30, 2002

Defendant-Petitioner

This cause came to be considered upon the motion of Plaintiff-Respondent, State of Ohio, herein for an extension of time to file the Response of Plaintiff-Respondent and, the Court, upon consideration thereof, finds the motion is well taken and is granted.

Wherefore, it is the Order of this Court that the Plaintiff-Respondent has until December 30, 2002, to file said response.


Mark Schweikert, Judge
Hamilton County Court of Common Pleas

ENTER
NOV 26 2002
MARK R SCHWEIKERT

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION

STATE OF OHIO

NO. B-939022

Plaintiff-Respondent

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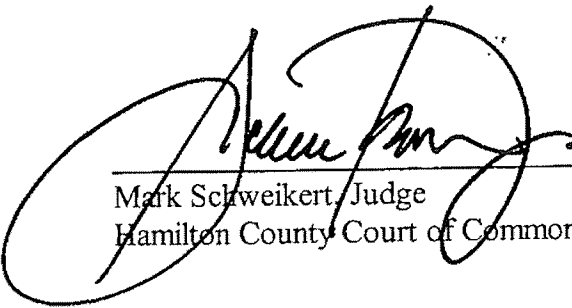
ENTRY GRANTING ADDITIONAL
TIME TO FILE RESPONSE UNTIL
DECEMBER 30, 2002

JAMES DERRICK O'NEAL

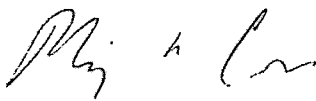
Defendant-Petitioner

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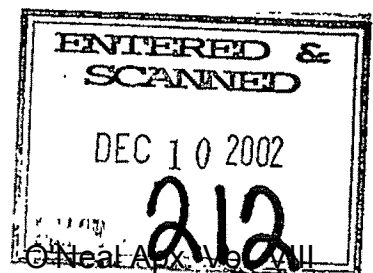

Mark Schweikert, Judge
Hamilton County Court of Common Pleas

ENTER
DEC - 9 2002
MARK R SCHWEIKERT


ASST. PROS. ATTY



D52839854



THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

CRIMINAL DIVISION

STATE OF OHIO

NO. B-939022

Plaintiff-Respondent

(Judge Schweikert)

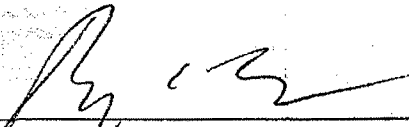
VS.

**MOTION TO EXTEND TIME TO
FILE A RESPONSE TO
DEFENDANT'S SUCCESSIVE
PETITION TO VACATE**

JAMES DERRICK O'NEAL

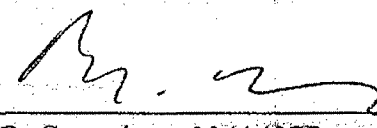
Defendant-Petitioner

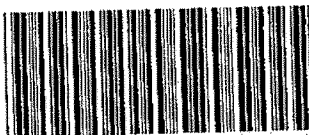
Now comes the State of Ohio, plaintiff-respondent, in the above entitled matter, and does hereby request a continuance until February 3, 2003, to file a response to defendant-petitioner's successive petition to vacate, which was filed on November 15, 2002, for the reason that counsel for the plaintiff-respondent has an extensive workload.


Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
513/946-3012

CERTIFICATION

I hereby certify on this 30 day of December, 2002, I have posted a copy of the above entitled document to counsel for the defendant by posting same in the United States mail addressed to John J. Gideon (0008151), Attorney at Law, 1093 South Fourth Street, Columbus, Ohio 43206-2621, and Michael W. Krumholtz (0009099), Attorney at Law, Bieser, Greer & Landis, LLP, 6 North Main Street, Suite 400, Dayton, Ohio 45402-1908.


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